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April 12, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Implementation of Section 301(j) of the Telecommunications Act
of 1996 -- Aggregation of Equipment Costs by Cable Operators
(CS Docket No. 96-57)

Dear Secretary Caton:

Enclosed are an original and 11 copies of the comments of the New York State Department of Public Service in the above-referenced proceeding.

Respectfully submitted,

John L. Grow per DD

John L. Grow
Special Counsel - Cable

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Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementation of Section 301(j))	CS Docket No. 96-57
of the Telecommunications Act of 1996)	
)	
Aggregation of Equipment Costs)	
By Cable Operators)	

COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

Introduction and Summary

The New York State Department of Public Service ("NYSDPS") submits these initial comments in response to the Notice of Proposed Rulemaking ("NPRM") in this docket. By this rulemaking, the Commission seeks to implement Section 301(j) of the Telecommunications Act of 1996 which would provide cable operators with greater flexibility to establish monthly rates for leased equipment than generally exists under the Commission's rules. NYSDPS agrees with the Commission's tentative conclusions including, particularly, that Congress did not intend for cable operators to have the same degree of flexibility for establishing monthly rates for equipment that is used by subscribers who receive only the basic service tier ("BST") or for establishing cable installation charges.

Discussion

The Commission's existing rules in Section 76.923 implement Section 623(b)(3) of the Communications Act, as amended in 1992, by requiring, inter alia, that a cable operator establish monthly rates for "each significantly different type" of remote control unit, converter box and other customer

receiving only the BST as hereinafter discussed, a cable operator may choose to have fewer separate equipment rates by aggregating costs for all equipment units that serve the same primary purpose and for a larger number of units reflecting a region of the company's operations or the entire company. The effect of aggregating capital costs of equipment this way (assuming no change in the repair component) is likely to be some increase in the monthly rates charged subscribers for older, less sophisticated remote control units and converters and somewhat lower rates for the newer more advanced equipment.

An explicit exception to the liberalized cost aggregation opportunities under the new statute applies to "equipment used by subscribers who receive only a rate regulated basic service tier." This exception is consistent with the intent of Congress in enacting the rate provisions of the 1992 Act to provide for a low cost basic service and with policies pursued by the Commission in certain rate settlement agreements where cable operators agreed to reduce monthly rates for the BST below otherwise permitted amounts. (See, e.g., Time Warner Social Contract) We believe the Commission's decision to treat separately all equipment used by BST only subscribers is a reasonable one under the circumstances and should be adopted. In this regard, we suggest that the rules require the cable operator to identify, on an annual basis when it files Form 1205, the number of units in each broad category of remote control units or converter boxes that were actually used by BST only subscribers

equipment. Commission rules also require monthly leased rates to include the average annual cost of servicing or repairing equipment based on the average time required and a company's hourly service charge. Thus, the monthly leased rates for equipment include two components: the capital cost of the equipment and the average cost of repairing or servicing the equipment. The repair component is determined by reference to the same hourly service charge that a company must use for establishing installation charges.

Section 301(j) amends Section 623 by adding a new paragraph (7) to subdivision (a) which provides that:

"[t]he Commission shall allow cable operators, . . . to aggregate, on a franchise, system, regional or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier."

The Commission is directed to revise its regulations within 120 days to implement the new provisions.

This new section requires cable operators to have the discretion to establish the cost component of equipment rates on a broader basis than under the existing rules. In the past, in New York State, some cable operators established separate monthly rates for up to three types of remote control units and as many, or more, types of converter boxes. Costs were generally aggregated at the system level. Under the proposed rule, and except for such equipment as may be used by a subscriber

during the reporting period and to determine the annual costs for such units based on the lowest cost units in each broad equipment category.

The Commission has tentatively concluded that Congress did not intend to allow cable operators the same discretion to aggregate costs for installation charges at the higher regional or company levels. NYSDPS concurs with the Commission's reading of the statute in this regard. Currently, these costs generally reflect system specific factors and they can vary significantly within a company. They should not be freely aggregated at a higher level. We can agree, however, that in the context of the statutory change, it is appropriate to permit cable operators to aggregate their costs for installation charges for a specific service area whenever an operator can demonstrate that the relevant costs within such area are substantially similar. There is a reasonable basis for this proposal in that installation and labor costs tend to vary more frequently than equipment costs but not necessarily on a system basis.

In reviewing the proposed amendments to Section 76.923(c)(2) we find what appears to be an inadvertent error in the paragraph entitled "Basic Service Tier Only Equipment." The last sentence in the paragraph should either be deleted entirely or changed to read as follows: "Costs for each significantly different type of equipment used by subscribers who receive only a rate regulated basic service tier shall not be averaged with

the costs of any other significantly different type of equipment used by the same subscribers."

Finally, as a general matter, we suggest that the Commission review the proposed rule and changes in the Form 1205 instructions in order to ensure that the different options (including limitations) for aggregating equipment costs and costs for installation are clearly distinguished and that the cable operator must clearly identify the options it chooses when justifying its equipment rates.

Conclusion

NYSDPS supports the tentative conclusions of the Commission as described herein.

Respectfully submitted,

Maureen O. Helmer / kal

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Dated: April 12, 1996